

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our)	GN Docket No. 09-51
Future)	
)	
Establishing Just and Reasonable Rates)	WC Docket No. 07-135
for Local Exchange Carriers)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Francisco J. Silva
Walter Arroyo
**PUERTO RICO TELEPHONE COMPANY,
INC.**
P.O. Box 360998
San Juan, Puerto Rico 00936-0998

Nancy J. Victory
Thomas J. Navin
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

August 24, 2011

*Counsel to Puerto Rico Telephone
Company, Inc.*

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COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

I. INTRODUCTION AND SUMMARY

Puerto Rico Telephone Company, Inc. (“PRT”) hereby responds to the Federal Communications Commission’s (“Commission”) *Public Notice* (“*Notice*”) in the above-captioned proceeding, which seeks comments on three different proposals to reform the Universal Service Fund (“USF”) high cost mechanism and intercarrier compensation regime and implement a Connect America Fund (“CAF”) and an Advanced Mobile/Satellite Fund (“AMF”).¹ As a general matter, PRT agrees that the USF and intercarrier compensation systems

¹ *Further Inquiry into Certain Issues in the Universal Service Intercarrier Compensation Transformation Proceeding*, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC

require reform to better support broadband deployment. The Commission, however, should refrain from applying any of the proposals referenced in the *Notice* to insular areas like Puerto Rico without appropriately tailoring such proposals to address issues unique to insular areas. The Commission has recognized that most insular areas, like Puerto Rico, currently lag dramatically behind the rest of the nation in telephone and broadband subscribership and deployment.² Indeed, the Commission's *Seventh Broadband Report* indicates that, in Puerto Rico, nearly three-fourths of the population remains unserved by broadband at speeds of 3 Mbps downstream and 768 kbps upstream compared with just 8% of the population of all states and

Docket No. 01-92, 96-45; GN Docket No. 09-51, DA 11-1348 (rel. Aug. 3, 2011) ("*Notice*"). The *Notice* seeks comment on various proposals filed in response to the February 2011 Notice of Proposed Rulemaking on universal service and intercarrier compensation reform. *See Connect America Fund et al.*, Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., FCC 11-13 (rel. Feb. 9, 2011) ("*NPRM*"). Specifically, the *Notice* seeks comments on proposals by the State Members of the Federal-State Universal Service Joint Board, the "RLEC Plan" put forward by the Joint Rural Associations, and the "America's Broadband Connectivity Plan" filed by six Price Cap Companies. *See* Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) ("ABC Plan"); Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011) ("State Member Comments"); Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed April 18, 2011) ("RLEC Plan").

² *See Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000) (finding that "subscribership levels are below the national average in ... certain insular areas"). *See also* Comments of Virgin Islands Telephone Corporation, GN Docket No. 11-16 (filed Mar. 2, 2011) (noting low broadband deployment in the U.S. Virgin Islands); Comments of Public Services Commission of the U.S. Virgin Islands, WC Docket No. 10-90 at 4-7 (filed Jul. 12, 2010) (discussing limitations on telecommunications infrastructure in the territory and challenges to deployment in the Virgin Islands); Comments of the Virgin Islands Telephone Corporation, CC Docket No. 96-45 at 15 (filed Nov. 3, 2000) (describing low penetration rates in the U.S. Virgin Islands).

territories with unserved areas.³ This broadband deficit caused President Obama to pledge to increase broadband deployment in Puerto Rico.⁴

As detailed extensively in this proceeding, carriers in Puerto Rico and other insular areas face a host of demographic, economic, geographic, and climatic challenges to deployment of broadband and wireline telecommunications services.⁵ For example, in Puerto Rico, 45 percent of the population lives below the federal poverty line.⁶ This means the potential customer base in Puerto Rico has the lowest median household income in the United States—by far. In addition to extraordinarily low incomes, consumers in insular areas also experience a

³ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Seventh Broadband Progress Report and Order on Reconsideration, GN Docket No. 10-159, FCC 11-78, Appendix D (rel. May 20, 2011) (“*Seventh Broadband Report*”) (reporting Form 477 census tract data). Using the county-level methodology used in the *Sixth Broadband Report*, the FCC reports that 98% of the population of Puerto Rico remains unserved by 3 MBps down and 768 kbps up, showing that no improvement has been made since last year. *See id.* at Appendix C.

⁴ President Barack Obama, *Remarks at Luis Muñoz Marín International Airport in San Juan, Puerto Rico*, June 14, 2011, available at <http://www.whitehouse.gov/blog/2011/06/15/more-just-history>.

⁵ For an extensive discussion of the challenges faced in insular areas, *see* Comments of Puerto Rico Telephone Company, Inc., WT Docket No. 10-90 (filed April 18, 2011), a copy of which is attached at Appendix A (“PRT Comments”).

⁶ Alemayehu Bishaw and Trudi J. Renwick, *Poverty 2008 and 2009: American Community Surveys*, *American Community Survey Reports* (Issued Sep. 2010), available at <http://www.census.gov/prod/2010pubs/acsbr09-1.pdf>. Recent United States Census data estimates that the median household income in Puerto Rico is \$18,314. “United States and States, Median Household Incomes,” U.S. Census Bureau, 2009 American Community Survey 1-Year Estimate, Puerto Rico Community Survey, available at http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=R1901&-ds_name=ACS_2009_1YR_G00_&-redoLog=false&-format=US-30&-mt_name=ACS_2008_1YR_G00_R1901_US30&-CONTEXT=grt. By contrast, Mississippi, the poorest state in the country, has a median household income of \$36,646, and the national median household income is \$50,221. *Id.*

disproportionately high cost of living that can be seen in the increased cost of basic commodities and consumer goods as compared to the mainland.⁷ For example, one gallon of milk in Puerto Rico costs approximately \$6, which is almost twice the cost in the mainland United States. For these reasons, insular areas like Puerto Rico require a tailored approach regardless of the proposal or combination of proposals that the Commission ultimately adopts for the mainland United States. Specifically, the Commission should not reduce USF support levels in insular areas until broadband deployment and subscribership measures in insular areas resemble national measures. This approach is in the public interest and required by the plain terms of Section 254(b) of the Communications Act.⁸ It also is consistent with the Commission's own recognition that "operating conditions" and a "lower level of broadband deployment" may necessitate a different approach in certain areas of the country.⁹ As the Commission considers these reform proposals, it should be mindful of its April 2010 commitment to "further increase telephone subscribership rates in Puerto Rico and to ensure that high-quality voice and broadband services are available in insular areas."¹⁰

⁷ See Estudios Tecnicos Inc., *Economic Conditions: Puerto Rico and the United States*, at 2 (Jan. 31, 2006) (noting that basic commodities such as electricity cost 70 percent more in Puerto Rico than on the mainland, while basic consumer goods such as a Honda Pilot cost 20 percent more in Puerto Rico than in the United States).

⁸ Section 254(b) provides in plain terms that the Commission "shall" base its universal service support mechanisms on the principle that consumers in "insular" areas should have access to "advanced telecommunications and information services" that are "reasonably comparable" to those in urban areas. 47 U.S.C. § 254(b).

⁹ Notice at 9.

¹⁰ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, ¶ 2 (2010) ("2010 Insular Order").

The instant comments focus on discrete topics raised in the *Notice* and in the three proposals that prompted the Commission to release the notice. *First*, the CAF for insular areas should be based on an appropriately-tailored competitive bidding framework to distribute support to one provider per area to maximize the efficiency and flexibility of the fund.¹¹ In such respects, the Commission should not extend to insular areas mainland cost models—such as the model proposed in the “America’s Broadband Connectivity Plan” (“ABC Plan”) or the model proposed by the State Members of the Federal-State Universal Service Joint Board (“State Members Plan”)—which are premised on characteristics typical of the continental United States. Historically, such cost models have not accurately accounted for the challenges of providing service in insular areas and have greatly underestimated the support needed.¹² *Second*, the Commission should use the CAF to support wireline broadband services and use a separate funding mechanism—the AMF—to support mobile wireless broadband. Through such a framework, the CAF would be targeted to ensure that the FCC’s broadband investments bring advanced broadband services to all regions of the nation through fixed networks that could best evolve to meet future broadband needs. *Third*, as all three plans recognize, the Commission should use a speed threshold higher than a 768 kbps download speed—ideally, 4 Mbps down and 1 Mbps up—to identify areas unserved by broadband, and the FCC should rely on accurate data in making this determination. And, *fourth*, because insular carriers like PRT rely on access charge revenues to recover network maintenance costs and do not have other opportunities to make up this revenue given the incredibly poor populations, the Commission should either exempt insular carriers from the intercarrier compensation reforms discussed in the *Notice* that

¹¹ In the *NPRM*, the Commission asked if bidding credits would be appropriate for insular areas. *See NPRM* at ¶ 306.

¹² *See PRT Comments* at 14 & n. 40.

would reduce access charges (at least until broadband deployment and subscribership improves) or otherwise provide explicit support to replace lost access charge revenue.

By following these recommendations, the Commission can lay the groundwork for improved telephone and broadband access and subscribership in insular areas as it begins the process of comprehensive reform.

II. INSULAR CAF SUPPORT SHOULD BE DISTRIBUTED THROUGH AUCTION MECHANISMS, NOT BASED ON COST MODELS.

As an initial matter, PRT reiterates that Section 254(b)'s plain terms mandate that the Commission take into account the unique needs of insular areas. Section 254(b) states that the Commission "shall" base its universal service support mechanisms on the principle that consumers in "insular" areas should have access to "advanced telecommunications and information services" that are "reasonably comparable" to those in urban areas.¹³ Indeed, Section 254(b)(3) lists "insular" areas as a category separate and apart from "rural" and "high cost" areas, thus mandating that the Commission address the lack of access to broadband in insular areas like Puerto Rico. And because the statute should be read to give significance to every word,¹⁴ the position advocated by the Virgin Islands Telephone Corporation, requesting that the FCC provide support only to rural, insular areas, is untenable and would not fulfill the Commission's statutory duty.¹⁵ In fact, the Commission has agreed that "Congress intended that

¹³ 47 U.S.C. § 254(b).

¹⁴ See, e.g., *Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998) ("It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.") (internal quotation marks and citation omitted); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (explaining that a law must be read "to give effect, if possible, to every clause and word of a statute"); see generally 2A Norman J. Singer, *Sutherland Statutory Construction* § 46.06 (6th ed. 2000).

¹⁵ See Comments of Virgin Islands Telephone Corporation d/b/a Innovative Telephone, WC Docket No. 10-90 at 2 (filed Apr. 18, 2011) ("Virgin Islands Telephone Comments").

consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services.”¹⁶ Congress explicitly determined that both “rural” and “insular” areas should benefit from universal service support. “[I]n interpreting a statute a court should always turn to one cardinal canon before all others . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992). And “when the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete’.” *Id.* For this reason, the Commission must ensure that all insular areas, including non-rural, insular areas, are taken into account as it embarks on USF reform.

As such, PRT believes that certain insular areas of the country like Puerto Rico require a different approach than the mainland approach offered in the three reform proposals. Rather than using a forward-looking cost model based on mainland inputs and assumptions, PRT believes that the CAF should distribute support in insular areas primarily through appropriately-tailored competitive bidding to one provider per service area.¹⁷ As PRT has previously documented, a reverse auction approach achieved through a competitive bidding mechanism would efficiently distribute much-needed support to unserved areas,¹⁸ while allowing necessary flexibility and the option of bidding credits for insular areas.¹⁹ PRT further agrees that winning

¹⁶ See *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, ¶ 33 (2005) (“2005 NPRM”).

¹⁷ PRT supports competitive bidding to win universal service support provided that such competitive bidding does not unfairly favor a particular technology or bidder.

¹⁸ PRT Comments at 14.

¹⁹ Insular providers support the use of bidding credits for insular areas. See, e.g., Joint Comments of Docomo Pacific, Inc., PR Wireless, Inc., Choice Communications, LLC, and AST Telecom, LLC d/b/a Bluesky Communications, WC Docket No. 10-90, at 10 (filed Apr. 18, 2011) (“Joint Insular Wireless Comments”); Virgin Islands Telephone Comments at 9.

bidders should provide both voice and broadband services²⁰ and insular CAF funding should supplement, not replace, other support provided through the high cost program.²¹

In addition to the Commission’s “competitive bidding everywhere” model,²² PRT would support a system that bestows on existing fixed broadband providers a right of first refusal (“ROFR”) to be the insular CAF eligible telecommunications carrier (“ETC”) to receive support to serve an area prior to an auction.²³ Under such a model, the insular CAF ETC should be identified on a wire-center basis and if the insular CAF ETC opts not to exercise its ROFR, it should remain eligible to participate in the competitive bidding process to serve that area.

By contrast, PRT strongly opposes using a mainland cost model—as proposed in the ABC Plan and State Member Plan—to distribute CAF support to insular areas like Puerto Rico for several reasons.²⁴ First, uniform cost models that have not considered the unique characteristics of providing service in poor but expensive insular areas have greatly underestimated the support needed.²⁵ Again, in this case, the models ignore the unique characteristics and needs of Puerto Rico, and *do not use any data from Puerto Rico or the other territories in their design*. For example, the ABC Plan relies on customer location data from the

²⁰ See *NPRM* at n. 420 & ¶ 418.

²¹ *Id.* at ¶ 261.

²² *Id.* at ¶ 418.

²³ Although the ABC Plan proposes the use of a cost model instead of an auction, the ABC Plan also would give an ILEC the opportunity to accept or decline a model-determined support amount in a wire center if the incumbent LEC has already made high-speed Internet service available to more than 35 percent of the service locations in the wire center. See ABC Plan at Attach. 1 at 6.

²⁴ See ABC Plan at Attach. 1 at 3-6, Attach. 3; State Member Comments at 37-38.

²⁵ See PRT Comments at 14 & n. 40.

Census Bureau, but these data are notoriously unreliable when applied to Puerto Rico.²⁶ Clearly, the Commission cannot apply a cost model to insular areas if the model does not appropriately reflect the challenges of providing telecommunications and broadband services in insular areas. Second, models like the ABC model rely heavily on a high level of customer penetration for purposes of determining the average line costs and comparing such costs across jurisdictions.²⁷ Similarly, the ABC model assumes average revenue per subscriber of \$80 per month.²⁸ These assumptions alone would exclude Puerto Rico from support despite the fact that Puerto Rico, which includes the poorest population per capita in the United States and lowest broadband penetration, is most in need of universal service support for broadband. Third, the ABC Plan and State Members Plan do not account for the incredibly low broadband deployment and penetration in Puerto Rico. Puerto Rico already suffers from inadequate telecommunications infrastructure when compared to the rest of the country. The Commission should not assume that insular areas can be treated like the mainland United States for purposes of applying any support model.

²⁶ The Census Bureau has acknowledged that significant problems exist with its address data in Puerto Rico: “The address landscape across Puerto Rico is a mix of styles and standards.” U.S. Census Bureau, Census 2000 Testing, Experimentation and Evaluation Program, *Topic Report Series No. 14: Puerto Rico* (Sept. 30, 2003), available at http://www.census.gov/pred/www/rpts/Puerto_Rico_FINAL.pdf#search='census%20bureau%20problems%20puerto%20rico. In fact, “[t]here was a concern about Puerto Rico’s unique addressing conventions and the use of Spanish. Most notable is the four line address where the urbanization name (neighborhood equivalent/connotation) is used to eliminate the tie between repeated street names in different urbanizations. In some instances, the urbanization, condominium or community/district name is used in lieu of a street name.” *Id.*

²⁷ See ABC Plan at Attachment 2 at 1.

²⁸ See *id.*

III. THE CAF SHOULD SUPPORT WIRELINE BROADBAND SERVICES SEPARATE AND APART FROM MOBILE BROADBAND SERVICES.

The insular CAF should be used to support wireline broadband services. To support mobile broadband service, the Commission should create a separate AMF, as recommended in the State Members Plan and RLEC Plan.²⁹ Supporting wireline and mobile wireless broadband services separately is consistent with the *National Broadband Plan*'s conclusion that, "[w]ireless broadband may not be an effective substitute in the foreseeable future for consumers seeking high-speed connections at prices competitive with wireline offers."³⁰ This approach is also consistent with the Commission's recognition that broadband speeds, capacity, and penetration for wireless services are typically much lower than for wireline broadband services.³¹ In Puerto Rico, adequate support for wireline services would not only bring Puerto Rico up to par with the rest of the nation's existing wireline broadband and telecommunications services, but it would do so efficiently by leveraging existing infrastructure. And investing in wireline networks would also ensure that the FCC's broadband investments are able to support an evolving level of broadband services. While a separate AMF would allow the Commission to supplement wireline broadband options in Puerto Rico and all insular areas, so that insular areas have access to the same variety of broadband services available in mainland areas.

²⁹ All three proposals that the *Notice* seeks comment on support the notion of providing funding for fixed broadband and some form of mobility. See State Member Comments at 2, 68-73; RLEC Plan at 83; ABC Plan at Attachment 1 at 8. However, the ABC Plan envisions the AMF as a way to limit CAF funding.

³⁰ *Connecting America: The National Broadband Plan* at 41 (rel. Mar. 16, 2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> ("*National Broadband Plan*").

³¹ See *Preserving the Open Internet Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, ¶ 95 (2010); see also *Seventh Broadband Report* at ¶ 26 (declining to include mobile broadband data in its analysis of broadband deployment because the conditions under which peak speeds reach the broadband threshold are still relatively rare).

IV. THE COMMISSION SHOULD USE 4/1 MEGABITS PER SECOND SPEEDS TO IDENTIFY INSULAR AREAS THAT ARE UNSERVED BY BROADBAND.

All three of the plans under consideration seem to anticipate supporting services above a 768 kbps download speed.³² However, it is not entirely clear how each plan would identify unserved areas eligible for CAF support. For insular areas, PRT proposes that the Commission use the 4 Mbps downstream and 1 Mbps upstream speed threshold identified in the *National Broadband Plan* and in the *Seventh Broadband Report* because this threshold readily allows consumers to access “high-quality voice, data, graphics, and video communications.”³³ As the Commission found, a 4/1 Mbps threshold also provides sufficient throughput to allow consumers to access an evolving level of broadband service.³⁴ That is why the Commission identified it as “the broadband capability . . . that should be available to all Americans.”³⁵ Indeed, the Commission has recognized that the vast majority of Americans are already able to receive broadband at these speeds.³⁶ Using a lower speed threshold for purposes of determining

³² ABC Plan at Attachment 1 at 2 (“Providers that receive CAF support must make available broadband service that provides customers with a minimum actual downstream bandwidth of 4 Mbps and a minimum actual upstream bandwidth of 768 kbps”); State Member Comments at 63 (requiring that, within five years, Providers of Last Resort provide broadband service at 4 Mbps); RLEC Plan at Appendix C at II (proposing potential Carrier of Last Resort obligations for ETC CAF recipients: “[s]peeds and functionalities must be reasonably comparable to those provided in urban areas” and “must be evaluated annually to ensure continuing reasonable comparability”).

³³ *National Broadband Plan* at 135; *Seventh Broadband Report* at ¶¶ 14-15; see also *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Sixth Broadband Deployment Report, 25 FCC Rcd 9556, ¶ 11 (2010) (“*Sixth Broadband Report*”).

³⁴ *Sixth Broadband Report* at ¶ 14.

³⁵ *Id.* at ¶ 5.

³⁶ *Seventh Broadband Report* at Appendix B (Unserved Population SBDD Census Tract Data).

unserved areas will unnecessarily exclude from insular CAF support many areas that are not currently served by advanced broadband services and thus condemn those areas to continue to lag behind the majority of the country in terms of broadband availability.

V. **THE COMMISSION SHOULD SUPPLEMENT LOST INTERCARRIER COMPENSATION REVENUE THAT RESULTS FROM INTERCARRIER COMPENSATION REFORM IN INSULAR AREAS.**

A recovery mechanism or other method of replacing lost intercarrier compensation revenue for insular areas will be needed as a result of intercarrier compensation reform.³⁷ This is particularly true in insular areas, which, as noted above, face higher costs and already lag behind the rest of the country in both broadband and telephone availability. In Puerto Rico, with access lines falling consistently each year, and a very poor subscriber base, revenue opportunities to recover investment are diminishing. Because PRT's access charges are already limited by commitments made to the FCC to become a price cap carrier,³⁸ and because the access charge revenue that the company does receive is necessary to help recover network maintenance costs, any intercarrier compensation reform that would reduce access charge revenue received by PRT would threaten the company's ability to meet its obligation to continue to serve Puerto Rico.³⁹ As a result, if the Commission adopts any of the proposed intercarrier compensation reforms—

³⁷ See Comments of Windstream Communications, Inc., WC Docket No. 10-90, at 46 (filed Apr. 18, 2011); Comments of CenturyLink, WC Docket No. 10-90, at 63 (filed April 18, 2011); Comments of Frontier Communications Corporation, WC Docket No. 10-90, at 4-10 (filed April 18, 2011).

³⁸ *Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, Order, 23 FCC Rcd 7353 (2008) (“PRT Price Cap Order”).

³⁹ The ABC Plan proposes that the Commission set the framework to reduce intrastate access rates and recovery to the extent necessary. ABC Plan at Attach. 1 at 10-13. In the alternative, the State Members Plan proposes that states reform intrastate rates and that the Commission facilitate this reform through state inducements rather than a federal framework. See State Member Comments at 148.

such as those proposed in the ABC Plan or the State Members Plan—the Commission should exempt insular areas from such reforms (at least until broadband deployment and subscribership improves). Alternatively, the Commission should adopt a mechanism whereby insular carriers would receive additional explicit support to make up for lost support, as the FCC contemplated might be necessary.⁴⁰ Providing explicit support would be consistent with the Commission’s preference for explicit support through universal service mechanisms, rather than implicit support through access changes.⁴¹

⁴⁰ *NPRM* at ¶ 492.

⁴¹ *PRT Price Cap Order* at ¶ 23 (citing *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order, 16 FCC Rcd 19613, ¶¶ 15, 62-68 (2001); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order, 15 FCC Rcd 12962, ¶ 111 (2000)).

VI. CONCLUSION

In sum, the Commission should pursue a tailored approach to address the unique and compelling needs of insular areas. This would include an insular CAF that is primarily based on competitive bidding and that funds wireline broadband services, as well as an additional mechanism to support wireless broadband services. Additionally, the Commission should use a 4/1 Mbps speed threshold to determine unserved areas eligible for insular CAF funding. Finally, the Commission should supplement lost intercarrier compensation revenue in insular areas that results from intercarrier compensation reform.

Respectfully submitted,

By: /s/ Nancy J. Victory

Francisco J. Silva
Walter Arroyo
**PUERTO RICO TELEPHONE COMPANY,
INC.**
P.O. Box 360998
San Juan, Puerto Rico 00936-0998

Nancy J. Victory
Thomas J. Navin
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

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*Counsel to Puerto Rico Telephone
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Nancy J. Victory
Thomas J. Navin
Priscilla Delgado
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

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*Counsel to Puerto Rico Telephone
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COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

I. INTRODUCTION AND SUMMARY

Puerto Rico Telephone Company, Inc. (“PRT”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking on reform of the universal service fund (“USF”) high cost mechanism and intercarrier compensation regime and implementation of the Connect America Fund (“CAF”).¹ As the Commission has recognized, most insular areas, like

¹ *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rats for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, CC Docket No. 01-92, CC Docket 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (“NPRM”).

Puerto Rico, currently lag behind the rest of the nation in telephone and broadband subscribership and deployment.² As the Commission embarks upon universal service and intercarrier compensation reform, it should be mindful of its April 2010 commitment to “further increase telephone subscribership rates in Puerto Rico and to ensure that high-quality voice and broadband services are available in insular areas.”³ This proceeding provides the Commission an opportunity to fulfill its 2010 commitment to Puerto Rico by following three simple guidelines.

First, as the Commission begins to redirect high cost funding to the CAF, the Commission should ensure that insular areas like Puerto Rico continue to receive existing levels of universal service support until these territories’ telephone and broadband penetration and deployment rates are on par with those of the rest of the nation. This is in the public interest and required by the plain terms of Section 254(b) of the Communications Act.⁴ Carriers in insular areas face a host of demographic, economic, geographic, and climatic challenges to deployment of broadband and wireline telecommunications services. And today, because of the lack of a

² See *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000) (finding that “subscribership levels are below the national average in ... certain insular areas”). See also Comments of Virgin Islands Telephone Corporation, GN Docket No. 11-16 (filed Mar. 2, 2011) (noting low broadband deployment in the U.S. Virgin Islands); Comments of Public Services Commission of the U.S. Virgin Islands, WC Docket No. 10-90 at 4-7 (filed Jul. 12, 2010) (discussing limitations on telecommunications infrastructure in the territory and challenges to deployment in the Virgin Islands); Comments of the Virgin Islands Telephone Corporation, CC Docket No. 96-45 at 15 (filed Nov. 3, 2000) (describing low penetration rates in the U.S. Virgin Islands).

³ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, ¶ 2 (2010) (“2010 Insular Order”).

⁴ 47 U.S.C. § 254(b).

funding mechanism to address these challenges, Puerto Rico in particular lags far behind the rest of the nation in both telephone and broadband subscribership and deployment.

Second, as the Commission moves forward with implementation of the CAF, it should follow two principles: (1) the Commission should distribute CAF funding both in Phase I and in the long term only through competitive bidding and not through the use of a cost model; and (2) the Commission should classify unserved areas under the CAF as those that lack broadband download speeds of 4 Mbps and upload speeds of 1 Mbp. These speed thresholds were appropriately identified in the National Broadband Plan and reflect the national average download speed.⁵ The Commission has provided no reasoned explanation for a decision to depart from this threshold.

And *third*, as the Commission takes up intercarrier compensation reform, it should consider that intercarrier compensation is a critical component of revenues needed to ensure universal service in insular areas. These monies are used to build and maintain telephone and broadband capable networks in these areas. For example, PRT depends on access charge revenue as one means of ensuring that it can support these facilities in areas that may otherwise be too expensive to serve. Thus, any reform that would reduce the access charge revenue received by insular carriers like PRT could threaten their ability to meet their obligation to serve high cost areas in their insular operating territories. As such, the Commission should replace any lost access charge revenues in Puerto Rico and other insular areas with explicit support or else exempt insular areas from the intercarrier compensation reform effort until such areas show improvement in telephone and broadband deployment.

⁵ *Connecting America: The National Broadband Plan* at 21 (rel. Mar. 16, 2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“*National Broadband Plan*”).

By following these recommendations, the Commission can lay the groundwork for improved telephone and broadband access and subscribership in insular areas as it begins the process of comprehensive reform.

II. USF REFORM MUST TAKE INTO ACCOUNT THE UNIQUE NEEDS OF INSULAR AREAS.

While PRT applauds the Commission's efforts to fundamentally reform USF and intercarrier compensation to better support broadband services, PRT believes that any reform to the USF must take into account the unique needs of insular areas as required by the plain terms of Section 254(b) of the Communications Act.⁶ For example, carriers in Puerto Rico face a number of demographic, economic, geographic, and climatic challenges to deployment of broadband and wireline telecommunications services.⁷ Any failure to address these challenges pursuant to its statutory duty to do so will leave Puerto Rico even further behind the rest of the nation in both telephone and broadband subscribership and deployment.⁸ The only way to prevent Puerto Rico from falling further behind is to ensure that existing universal service

⁶ 47 U.S.C. § 254(b).

⁷ See, e.g., Comments of Puerto Rico Telephone Company Inc., WC Docket No. 10-90 at 8-13 (filed July 12, 2010) ("PRT CAF NOI Comments"); see also Petition for Reconsideration of Puerto Rico Telephone Company, Inc., WC Docket Nos. 05-337 & 03-109, CC Docket No. 96-45 at 16-20 (filed Apr. 27, 2010) ("PRT Petition for Reconsideration").

⁸ The FCC is statutorily obligated to promote universal service in insular areas. Despite this obligation, since the passage of the 1996 Act, P.L. 104-104, the Commission has yet to adopt a universal service mechanism that addresses the unique needs of insular areas despite the call of PRT, a number of minority groups, and the Telecommunications Regulatory Board of Puerto Rico to do so. As a result, despite having a "materially lower" level of telephone and broadband subscribership than the rest of the nation, as non-rural insular area, Puerto Rico receives zero high cost intrastate loop support. *2010 Insular Order* ¶ 49. PRT has petitioned the Commission to reconsider its *2010 Insular Order* and continues to urge the Commission to act expeditiously to reverse this unlawful order. See PRT Petition for Reconsideration.

support to Puerto Rico and other insular areas is not reduced until the levels of telephone and broadband penetration and deployment in these areas are equal to national levels.

A. Section 254(b) Requires the FCC to Address the Unique Conditions of Insular Areas as It Reforms the USF.

Section 254(b) provides in plain terms that the Commission “shall” base its universal service support mechanisms on the principle that consumers in “insular” areas should have access to “advanced telecommunications and information services” that are “reasonably comparable” to those in urban areas.⁹ Section 254(b)(3) specifically lists “insular” areas as a category separate and apart from “rural” and “high cost” areas, thus requiring the Commission to address the lack of access to broadband services in insular areas such as Puerto Rico.¹⁰ The Commission itself agrees that “Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services.”¹¹ Given this, the Commission must ensure that, as it embarks on USF reform, it addresses the needs of insular areas.

⁹ 47 U.S.C. § 254(b).

¹⁰ See, e.g., *Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998) (“It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.”) (internal quotation marks and citation omitted); *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (explaining that a law must be read “to give effect, if possible, to every clause and word of a statute”); see generally 2A Norman J. Singer, Sutherland Statutory Construction § 46.06 (6th ed. 2000).

¹¹ See *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, ¶ 33 (2005) (“2005 NPRM”). This conclusion is consistent with the Commission’s previous acknowledgment that Congress intended to provide universal service support for the benefit of consumers in insular areas. See, e.g., *Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, ¶ 42 (2004) (noting “Congressional intent ... support[ing] the adoption of special mechanisms by which to calculate support for insular areas”).

Insular broadband providers face a number of demographic, economic, geographic and climatic challenges. For example, in Puerto Rico, 45 percent of the population lives below the federal poverty line.¹² As such, the potential customer base in Puerto Rico has the lowest median household income in the United States—by far. Recent United States Census data estimates that the median household income in Puerto Rico is \$18,314.¹³ By contrast, Mississippi, the poorest state in the country, has a median household income of \$36,646, and the national median household income is \$50,221.¹⁴ In addition to extraordinarily low incomes, consumers in insular areas also experience a disproportionately high cost of living that can be seen in the increased cost of basic commodities and consumer goods as compared to the mainland.¹⁵

Unfortunately, there does not appear to be any near term solution to the poverty or disproportionately high cost of living in Puerto Rico. Indeed, unemployment continues to plague Puerto Rico at levels that far outpace the national rate. In February 2011, the unemployment rate in Puerto Rico was a staggering 16.1%, almost double the national unemployment rate of 8.9%.¹⁶

¹² Alemayehu Bishaw and Trudi J. Renwick, Poverty 2008 and 2009: American Community Surveys, *American Community Survey Reports* (Issued Sep. 2010), available at <http://www.census.gov/prod/2010pubs/acsbr09-1.pdf>.

¹³ “United States and States, Median Household Incomes,” U.S. Census Bureau, 2009 America Community Survey 1-Year Estimate, Puerto Rico Community Survey, available at http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=R1901&-ds_name=ACS_2009_1YR_G00_&-redoLog=false&-format=US-30&-mt_name=ACS_2008_1YR_G00_R1901_US30&-CONTEXT=grt.

¹⁴ *Id.*

¹⁵ See Estudios Tecnicos Inc., *Economic Conditions: Puerto Rico and the United States*, at 2 (Jan. 31, 2006) (noting that basic commodities such as electricity cost 70 percent more in Puerto Rico than on the mainland, while basic consumer goods such as a Honda Pilot cost 20 percent more in Puerto Rico than in the United States).

¹⁶ “Economy at a Glance: Puerto Rico,” Bureau of Labor Statistics, available at <http://www.bls.gov/eag/eag.pr.htm>; “Economy at a Glance: United States,” Bureau of Labor Statistics, available at <http://www.bls.gov/eag/eag.us.htm>.

And, as PRT has described previously, separate and apart from individual poverty, island-wide financial struggles also hinder Puerto Rico's economy and broadband deployment.¹⁷ Just one year ago, federal regulators brokered the sale of the three principal banks in an effort to fix the commonwealth's troubled banking system.¹⁸ As Puerto Rican banks continue to recover from the recession, broadband providers, like other businesses in Puerto Rico, find it difficult to secure funding for projects in Puerto Rico. At bottom, these macro-level problems—which are unique to Puerto Rico in their severity—severely hinder broadband investment and deployment in Puerto Rico.

Further, broadband providers and investors are reluctant to invest heavily in broadband in Puerto Rico because of the higher operational expenses associated with providing service in an isolated and tropical area. Indeed, PRT faces significantly higher operational costs compared to other carriers its size, such as: (i) higher shipping-related costs; (ii) higher operational costs associated with the topography of Puerto Rico, such as the rough, hilly terrain and heavy tropical vegetation in sparsely populated inland areas; and (iii) higher operational costs associated with the tropical climate of Puerto Rico, which is corrosive to telecommunications equipment, leading to accelerated deterioration of equipment; and severe tropical weather in the Caribbean, which

¹⁷ See PRT CAF NOI Comments at 11-12; Puerto Rico's banking industry has struggled with higher rates of past-due loans and FDIC-forced closures. See "Puerto Rico Fiscal Situation Update," Center for the New Economy, Vol. 4, No.1, at 4 (May 2010) ("Private financial institutions in Puerto Rico are under great strain. Total commercial bank assets in Puerto Rico have declined from \$101.5 billion as of December 2005 to \$89.6 billion as of December 31, 2009, a decline of \$11.9 billion, or 11.7 percent. This means Puerto Rico is experiencing a significant credit contraction as the local financial industry is de-levering to bring the asset side of balance sheets into line with capital requirements."); "Puerto Rican Lenders Face Their Own Crisis," New York Times (April 29, 2010), *available at* http://www.nytimes.com/2010/04/30/business/30fdic.html?_r=1&scp=1&sq=puerto%20rico%20unemployment&st=cse ("New York Times Article").

¹⁸ "F.D.I.C. Brokers the Sale of 3 Banks," New York Times (April 30, 2010) *available at* <http://www.nytimes.com/2010/05/01/business/01bank.html>.

leads to frequent power outages that can damage equipment and which requires frequent reconstruction of existing infrastructure due to storm and hurricane damage.¹⁹

Even the Commission has acknowledged the formidable challenges facing insular areas: “insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”²⁰ Without additional, targeted broadband funding, there is no business case for private investment in broadband deployment in unserved areas in Puerto Rico. Despite these challenges, the Commission has thus far not taken the steps necessary to fulfill Congress’s directive.

¹⁹ See also *Federal-State Joint Board on Universal Service*, Order, FCC 05-178, ¶ 2 (Oct. 14, 2005); Comments of Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 7-8 (Dec. 17, 1999). For example, in 1999, Hurricane George caused more than \$80 million in damages to PRT facilities. In 2004, Hurricane Jeanne caused \$9.2 million in damage. See, e.g., Letter from Nancy J. Victory, Counsel for PRT, to Jeffrey Carlisle, Chief, Wireline Competition Bureau, CC Docket No. 96-45, at 2 (Mar. 28, 2005); Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 9 n.19 (Jan. 14, 2004).

²⁰ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 112, 314, 414-415 (1997); see also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶ 5 (1999) (noting that “[t]elephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag behind the penetration rates in the rest of the country”); *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000) (finding that “subscribership levels are below the national average in ... certain insular areas”).

B. Puerto Rico Lags Far Behind the Rest of the Nation in Telephone and Broadband Subscribership and Deployment.

To date, the Commission's policies have failed to account for the unique nature of insular areas through an explicit universal service mechanism.²¹ This failure has contributed to poor telecommunications infrastructure deployment in insular areas like Puerto Rico and a "materially lower" telephone penetration rate than the rest of the nation.²² The Commission's most recent figure for combined wireline and wireless telephone penetration in Puerto Rico is 91.9% which is still well below the national penetration rate of 98.2% and lowest state penetration rate of 95.7% in New Mexico.²³ Commissioner Copps eloquently summarized the situation in Puerto Rico: "Voice penetration there still falls significantly below the average. Furthermore, the insular nature of Puerto Rico, as well as its low median household income—roughly one third of the national median household income—create a unique situation which should not be overlooked any longer. More is needed here."²⁴

And because telecommunications infrastructure is critical to broadband deployment, Puerto Rico's broadband deployment and subscribership lags significantly behind the rest of the nation: The Commission's *Sixth Broadband Report*,²⁵ concludes that Puerto Rico is entirely

²¹ Although Section 254(b)(3) specifically identifies rural, insular, and high cost areas as separate regions entitled to receive universal service support, the Commission has only adopted specific funding mechanisms to address issues faced in rural areas.

²² *2010 Insular Order*, ¶ 49.

²³ *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 6.4 (rel. Dec. 2010) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-303886A1.pdf. Wireline penetration is estimated to be much lower—below 75%.

²⁴ Separate Statement of Commissioner Copps, *2010 Insular Order*.

²⁵ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Sixth Broadband Deployment Report, 25 FCC Rcd 9556 (2010) ("*Sixth Broadband Report*").

unserved by broadband—defined as service with actual download speeds of 4 Mbps and actual upload speeds of 1 Mbps.²⁶ Indeed, one-sixth of unserved Americans by the FCC’s calculations live in Puerto Rico. The *Sixth Broadband Report* also shows that a similar situation exists in other insular areas: In the U.S. Virgin Islands, the Northern Mariana Islands, and American Samoa—ten out of eleven municipal areas in these islands are unserved by broadband.²⁷ Even the Commission’s other measures of access to high-speed Internet services, defined as speeds greater than 200 kbps in at least one direction, show that Puerto Rico lags far behind the rest of the country—only 37 percent of households in Puerto Rico have high-speed Internet access connections, compared with 64 percent across the rest of the United States.²⁸ PRT attributes the lack of broadband connectivity to a number of factors, including the extensive poverty in Puerto Rico, the island’s poor overall economic health, and the unique expenses of providing service in an isolated and tropical area like Puerto Rico.

Thus, without adequate explicit support, economic conditions will continue to foreclose widespread deployment of broadband in Puerto Rico because wireline providers will remain unable to justify the enormous expense of deployment. And, as PRT has previously explained, existing USF adoption programs directed at low income individuals standing alone do not solve all of the economic issues concerning the deployment of broadband in extraordinarily poor areas

²⁶ *Sixth Broadband Report* at Appendix B, “Unserved Areas By State or U.S. Territory.”

²⁷ *Id.* at Appendix C (identifying three unserved counties in the United States Virgin Islands, three unserved counties in Northern Mariana, and four unserved counties in American Samoa). The Report examined 11 municipal areas in the U.S. Virgin Islands, American Samoa, Guam and Northern Mariana. Two counties in Northern Mariana were excluded from the analysis due to data irregularities.

²⁸ See Industry Analysis and Competition Division, Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of June 30, 2010*, at Table 21 (rel. Feb. 2010), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0321/DOC-305296A1.pdf.

of the United States.²⁹ Such programs are most effective where facilities to provide services have already been constructed. But in areas where broadband facilities are unconstructed (as in many parts of Puerto Rico), such programs do not assist providers to make the economic calculus that the construction of new facilities is economically reasonable. Without some ability to project higher subscription rates or predictable subsidization of the construction and maintenance of facilities, the economics of deploying infrastructure in poor unserved areas simply foreclose construction of the facilities. As a result, absent rapid Commission action, the broadband availability gap in insular areas will continue its steady increase, and these areas' citizens will lose out on the tremendous economic, employment, health, and educational benefits that universal broadband provides to the rest of the country.³⁰

C. The FCC Should Not Reduce Any USF Support in Insular Areas Like Puerto Rico Until Telephone and Broadband Subscribership and Deployment Rates in These Areas Are on Par with National Rates.

Any change to existing universal service funding in Puerto Rico could have devastating consequences given the fragility of the island's economic situation, the lack of broadband deployment, and the low telephone and broadband subscription rates when compared to the rest of the country. As such, PRT agrees that the Commission should "reserve a defined amount of funds in the CAF for insular areas."³¹ To do so, the Commission should retain all existing universal service distributions to insular areas like Puerto Rico³² until each has caught up to the

²⁹ PRT CAF NOI Comments at 10, 16-17.

³⁰ The time for Commission action in Puerto Rico is now. The Report emphasizes that "[i]f the Commission finds that broadband is not being deployed in a reasonable and timely manner, it *must 'take immediate action to accelerate deployment'.*" Report at ¶ 29 (emphasis added).

³¹ NPRM ¶ 306.

³² For example, in proposed rule Section 54.307, the FCC proposes phasing out support for competitive eligible telecommunications carriers over a five-year period. NPRM ¶¶ 242, 249.

rest of the United States in broadband and telephone subscription and deployment. In particular, the Commission should delay its proposed five-year phase-down of competitive eligible telecommunications carrier support in Puerto Rico—as it has proposed to do for tribal lands³³—until it has firm evidence that shows the island has achieved levels of broadband and telephone penetration and deployment equal to the national average. Because the Commission so far has failed to address the unique needs of consumers in insular areas to have access to reasonably comparable “telecommunications and information services,”³⁴ any further reduction in universal service funding now could have devastating consequences given challenges that insular areas face.

Setting aside funding until insular areas’ penetration and deployment rates reach parity with national averages is consistent with the Commission’s broader universal service goal of targeting support to underserved and unserved areas. For instance, throughout the *NPRM*, the Commission recognizes that both insular and tribal lands will require additional efforts to reach national levels of penetration. First, the Commission seeks comment on providing bidding credits in the CAF auction mechanism to carriers that will serve insular and tribal areas.³⁵ And second, the Commission recognized that because “there may be no private business case” to serve certain areas, including insular areas, additional explicit support may be needed.³⁶ Additionally, in considering the structure of its Mobility Fund, the Commission sought comment on methods to target funding to areas that lag behind in 3G deployment to bring them on par with

³³ See *id.* ¶ 259.

³⁴ 47 U.S.C. § 254(b)(3) (emphasis added).

³⁵ *NPRM* ¶ 421.

³⁶ *Id.* ¶ 492.

national 3G deployment.³⁷ Consequently, the Commission should use a targeted approach here to continue to provide support to Puerto Rico and other insular areas until these areas reach national levels of telephone and broadband penetration and deployment.

III. THE COMMISSION SHOULD DESIGN THE CAF TO ENSURE THAT ADEQUATE BROADBAND SPEEDS ARE MADE AVAILABLE THROUGHOUT THE NATION, INCLUDING IN INSULAR AREAS.

The Commission should design the CAF in both Phase I and in the long term so that it funds the deployment of broadband infrastructure that will support the National Broadband Plan's benchmark of 4 Mbps down and 1 Mbps up throughout the nation, including in insular areas. To do so, the Commission should follow two principles at the outset. *First*, the Commission should distribute CAF funding both in Phase I and in the long term only through competitive bidding and not through the use of a cost model.³⁸ *Second*, the Commission should raise the speed threshold for areas eligible for CAF support from areas without broadband download speeds of 768 kbps to areas without broadband at 4 Mbps down and 1 Mbps up, consistent with prior Commission findings and the National Broadband Plan's recommendations. And, in determining which areas are eligible for CAF support, the Commission must ensure that the data upon which it relies are accurate and subject to close scrutiny by broadband providers and the public to ensure the veracity of the data.

In both Phase I and beyond, the FCC should design a CAF that distributes and targets support through competitive bidding to one provider per unserved area,³⁹ rather than utilizing a

³⁷ *Universal Service Reform, Mobility Fund*, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, ¶ 28 (rel. Oct. 14, 2010).

³⁸ PRT supports the FCC's "competitive bidding everywhere" long term option. *See NPRM* ¶ 418.

³⁹ *Id.* ¶ 264.

cost model. As PRT has discussed previously, cost models do not accurately account for the costs of providing service in insular areas.⁴⁰ Instead, a reverse auction approach through competitive bidding, would efficiently distribute much needed support to unserved areas, while allowing necessary flexibility and the option of bidding credits, for insular areas. PRT further agrees that winning bidders should provide both voice and broadband services⁴¹ and that in Phase I of the CAF, funding should supplement, not replace, other support provided through the high cost program.⁴² PRT also generally supports the Commission’s proposed rules for its short and long form applications for Phase I of the CAF.⁴³

Moreover, to determine which areas are eligible for CAF support, the Commission should use the 4 MBps down and 1 MBps up speed threshold identified in the National Broadband Plan.⁴⁴ This is consistent with the *Sixth Broadband Report*, in which Commission determined to benchmark broadband at 4 Mbps down and 1 Mbps up.⁴⁵ After finding “that consumers increasingly are using their broadband connections to view high-quality video, and want to be able to do so while still using basic functions such as email and web browsing,” the Commission found that this benchmark was a “reasonable estimate of the availability of ‘advanced telecommunications services’” under section 706, which requires that broadband services enable

⁴⁰ See PRT CAF NOI Comments at 5-7.

⁴¹ See NPRM n.420 & ¶ 418.

⁴² *Id.* ¶ 261.

⁴³ See NPRM ¶¶ 326-30, 349-60. However, the Commission should make clear that pending Universal Service Administrative Company appeals that have not been fully determined by the Commission or are pending before a United States Court of Appeals will not affect eligibility under proposed rule §54.1004 governing short form applications.

⁴⁴ *National Broadband Plan* at 135; see also *Sixth Broadband Report* ¶ 14.

⁴⁵ *Sixth Broadband Report* ¶ 11.

users “to originate and receive high-quality voice, data, graphics, and video telecommunications.”⁴⁶ And in selecting this benchmark the Commission focused not on how these services are used today, but as it expects “them to evolve in the next several years.”⁴⁷ Using a slower speed threshold to identify areas eligible for CAF support would thus deny support to areas in need of advance broadband access and hold these areas back from achieving the evolving level of broadband services that the Commission envisions.

What is more, by targeting the CAF to areas lacking download speeds of 768 kbps, the Commission may overlook insular areas, like Puerto Rico, which currently are wholly unserved by broadband download speeds of 4Mbps,⁴⁸ if those areas are covered by 3G wireless services with “advertised” download speeds of 768 kbps. This is the wrong approach because, as the National Broadband Plan recognized, “[w]ireless broadband may not be an effective substitute in the foreseeable future for consumers seeking high-speed connections at prices competitive with wireline offers.”⁴⁹ Indeed, the Commission itself recognized the difference between wireline and wireless networks in crafting its recent Internet rules: “Mobile broadband speeds, capacity, and penetration are typically much lower than for fixed broadband In addition, existing mobile networks present operational constraints that fixed broadband networks do not typically

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 14.

⁴⁸ *Id.*, Appendix B. Comparatively, the National Broadband Plan found that the national average actual download speed was 4 Mbps. *National Broadband Plan* at 21.

⁴⁹ *National Broadband Plan* at 41. The Plan also noted that studies had shown that actual mobile broadband speeds may often been slower than advertised due to a variety of factors. Indeed, reports showed that the current average *actual* mobile broadband speeds to be approximately 106 kbps. *Id.* at 22.

encounter.”⁵⁰ In Puerto Rico, support for wireline broadband services would not only bring Puerto Rico up to speed with the rest of the nation, but it would do so efficiently by leveraging existing infrastructure.⁵¹ Indeed, PRT’s wireline network passes by approximately 1,214,546 of the approximately 1,413,535 homes in Puerto Rico. Investing in wireline networks would also help to ensure that the Commission’s broadband investments would fund technology that could support an evolving level of broadband services.

Finally, the Commission must ensure that the data upon which it relies to determine which areas are CAF-eligible are accurate. PRT does not believe that the data that has been currently presented by Connected Nation for Puerto Rico accurately reflect the state of broadband deployment in Puerto Rico, and PRT is working with Connected Nation to address these concerns.⁵² For the moment, PRT believes that the Connected Puerto Rico broadband map vastly overstates broadband access in Puerto Rico, particularly for digital subscriber line service. These issues must be addressed and corrected before the Commission relies on Connected Nation’s data.

In sum, the Commission should pursue a competitive bidding approach during all stages of implementing the CAF, and, using reliable data, make eligible for support all areas determined to lack broadband service at 4 Mbps down and 1 Mbps up.

⁵⁰ See *Preserving the Open Internet Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, ¶ 95 (2010).

⁵¹ The FCC has recognized that 12,000 foot-loop-DSL provides the “best economics in delivering 4 Mbps down- and 1 Mbps up-stream to the unserved areas of the country.” See “The Broadband Availability Gap,” Omnibus Broadband Initiative Technical Paper 1, FCC, at 59, available at Appendix C of *Connect America Fund*, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, ¶ 53 (2010).

⁵² See Letter from Raquel Noriega, Connected Nation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 16, 2011).

IV. THE COMMISSION SHOULD EITHER PROVIDE RECOVERY OF LOST ACCESS CHARGES THROUGH AN EXPLICIT UNIVERSAL SERVICE MECHANISM OR EXEMPT INSULAR AREAS FROM THE INTERCARRIER COMPENSATION REFORM EFFORT.

Access charge compensation is a critical component of revenues needed to build and maintain broadband capable networks in insular areas like Puerto Rico. PRT's access charges are already limited by commitments made to the FCC to become a price cap carrier, but the access charge revenue that the company does receive is necessary to help recover the costs of maintaining its network.⁵³ With access lines falling consistently year over year and an extremely poor population, revenue opportunities for the recovery of investment are increasingly diminishing. As such, any reform that would reduce access charge revenue received by PRT will threaten PRT's ability to meet its obligation to continue to serve high Puerto Rico. The Commission has recognized as much in its National Broadband Plan: the continued decline in terminating minutes and intercarrier compensation revenue "at unpredictable levels could hamper carriers' ability to implement network upgrade investments or other capital improvements."⁵⁴

PRT is currently a price cap carrier, and has limited ability to recover lost intercarrier compensation revenues through rate increases. In fact, PRT has committed to the commission to cap its residential subscriber line charges ("SLCs") at \$6.50 to \$7.00.⁵⁵ In addition, PRT's explicit support for access charges through the universal service fund is frozen at 2007 levels.⁵⁶

⁵³ *Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules*, Order, 23 FCC Rcd 7353 (2008) ("PRT Price Cap Order").

⁵⁴ *National Broadband Plan* at 142.

⁵⁵ *PRT Price Cap Order* ¶ 3.

⁵⁶ *Id.* ¶ 24.

As a result, if any reforms would decrease PRT's access charge revenue, the Commission should either exempt insular areas from its intercarrier compensation reform effort or adopt a mechanism whereby PRT would receive additional explicit support to make up for lost revenue, as the FCC contemplated might be necessary in insular areas.⁵⁷ This approach is consistent with the Commission's preference for explicit support through universal service mechanisms, as opposed to implicit support through access charges,⁵⁸ and will help to maintain existing support for insular areas.

V. CONCLUSION

For the foregoing reasons, the Commission should ensure that Puerto Rico and other insular areas continue to receive existing levels of universal service support until the territories' telephone and broadband penetration and deployment rates are equal to that of the rest of the nation. And, as the FCC implements the CAF, it should use a competitive bidding approach at all stages while also making eligible for support all areas that lack broadband at 4 Mbps down and 1 Mbps up. Lastly, if the Commission's intercarrier compensation reforms decrease access charge revenues in insular areas like Puerto Rico, the Commission should replace such lost revenue with explicit support or else exempt insular areas from the intercarrier compensation reform effort until such areas show improvement in telephone and broadband deployment.

⁵⁷ See *NPRM* ¶ 492.

⁵⁸ *PRT Price Cap Order* ¶ 23 (citing *Multi-Association Group (MAG) Plan for Regulation of INtersate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order, 16 FCC Rcd 19613, ¶¶ 15, 62-68 (2001); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order, 15 FCC Rcd 12962, ¶ 111 (2000)).

Respectfully submitted,

By: /s/ Nancy J. Victory

Francisco J. Silva
Walter Arroyo
**PUERTO RICO TELEPHONE COMPANY,
INC.**
P.O. Box 360998
San Juan, Puerto Rico 00936-0998

Nancy J. Victory
Thomas J. Navin
Priscilla Delgado
WILEY REIN LLP
1776 K Street, N.W.
Washington, DC 20006
TEL: 202.719.7000
FAX: 202.719.7049

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*Counsel to Puerto Rico Telephone
Company, Inc.*